

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE NUNEZ, individually and as
class representative,

Plaintiff,

-VS-

TYSON FRESH MEATS, INC.,

Defendant.

NO. CV-06-5041-LRS

ORDER OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT

The parties jointly request that the Court grant preliminary approval of the Settlement and Allocation Plan; approve the proposed notices; and set a final hearing, at which time the parties will ask the Court to grant final approval. The Court has reviewed the file and records and the Declaration of David N. Mark in Support of Motion Re Class Settlement, including the proposed class notices, class actions settlement, and stipulation regarding tolling of statutes of limitations.

THE COURT HEREBY ORDERS:

1. The Class Settlement Agreement and Allocation Plan (attached to the Declaration of David Mark, Exhibit 1, Ct. Rec. 4) is hereby **PRELIMINARILY APPROVED** and the parties' Joint Motion for Class Certification of a Settlement Class and Approval of Class Settlement, Ct. Rec. 2, is **GRANTED**.

1 2. The Court ratifies propriety of the certification pursuant to
2 Fed.R.Civ.P. 23 and *Staton v. Boeing, Co.*, 327 F.3d 938, 952 (9th Cir.
3 2003) and hereby **GRANTS** settlement class certification. The Court
4 further finds that Jose Nunez fairly and adequately represents the
5 interests of the settlement class. This matter will be maintained as a
6 class action on behalf of a class described as:

7 i. All individuals who were hired by defendant on or after May
8 15, 2002 and who performed production work in the Pasco
9 plant processing, slaughtering, and/or hides division,
10 during any time between September 2, 2002 and December 31,
11 2003, **and/or**;

12 ii. Who performed production work in the Pasco plant processing,
13 slaughtering, and/or hides divisions, during any time
14 between January 1, 2004 and the date of the parties'
15 execution of the Class Actions Settlement herein;

16 iii. But excluding work performed as a supervisor, manager,
17 quality control employee, guard, mechanic, laundry room
18 employee, janitor, knife room employee, and/or packaging
19 department employee.

20 3. The Court finds the proposed "Notice of Proposed Class Action
21 Settlement" (attached to the Declaration of David Mark, Exhibit 3, Ct.
22 Rec. 4) satisfies the requirements of due process and FRCP 23 and is
23 hereby **APPROVED**, subject to the amendments described herein in ¶ 4.

24 4. Each Class Notice is hereby approved with the following
25 amendments:

26 a. *The deadline to object or tell the Court what you think of the*

1 settlement shall be amended to September 8, 2006, at 10:00 a.m.
2 in the United States Courthouse, 25 South Third Street, in
3 Yakima, Washington.

4 b. May 8, 2006, the date the settlement agreement was signed, shall
5 be inserted in the first bulleted paragraph.

6 5. Within 48 hours of mailing "Notice of Proposed Class Action
7 Settlement," counsel for plaintiff shall certify to the Court in writing
8 the date on which the same has occurred. Proposed class members shall
9 opt out on or before **September 8, 2006**. Objections to the proposed
10 settlement shall be filed on or before **September 8, 2006**. The Final
11 Fairness Hearing will be conducted before the Honorable Lonny R. Suko,
12 in his courtroom in **Yakima, Washington**, on **September 8, 2006 at 10:00**
13 **a.m.**

14 6. This Order of Preliminary Approval of Class Settlement
15 incorporates by reference the entire settlement agreement identified
16 above as though fully set forth herein.

17 7. The Court has made a preliminary determination that the class
18 settlement appears to be fair, reasonable, and adequate to protect the
19 Class and is the result of bargaining between the parties after
20 sufficient investigation into the issues and draws its strength from
21 *Chavez et al., v. IBP, et al.*, Case No. 01-5093-RHW (E.D. Wa.) and
22 *Alvarez et al., v. IBP*, Case No. 98-5005 (E.D. Wa. 1998), *aff'd* 339 F.3d
23 894 (9th Cir.2003), *aff'd sub nom. IBP v. Alvarez*, 546 U.S. ___, 126 S.
24 Ct. 514 (2005). But said finding is subject to further review at the
25 Final Fairness Hearing referenced above.

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